



SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1942

No.

J. S. POTTS, Trading as Southern Progress
Publishing Company
APPELLANT

versus

MARTIN DIES
APPELLEE

**BRIEF IN SUPPORT OF PETITION FOR
WRIT OF APPEAL**

I.

THE OPINION OF THE COURT BELOW

The opinion of the court below is shown in full in the transcript of the record accompanying this petition.

II.

JURISDICTION

Petitioner has submitted this petition within the proper time after the final decision of the United States Court of Appeals for the District of Columbia denying rehearing was made on January 20th, 1943, and this petition is presented by him prior to April 20th, 1943, (within the three months prescribed).

III.

STATEMENT OF THE CASE

A full statement of the case is set forth in the petition (page 1 .) and, in the interest of brevity, it is adopted here and incorporated as part of this brief, without restatement.

IV.

SPECIFICATION OF ERROR

The District Court of the United States for the District of Columbia and subsequently the United States Court of Appeals for the District of Columbia erred in holding, as a matter of law, that the alleged libelous statement came within the exception of fair literary criticism. This is the sole point presented for the consideration of the court.

V.

ARGUMENT

For the sake of brevity petitioner does not wish to reiterate what he already has stated in his petition as to what is judicially known of the nature of Trojan horses. Petitioner herewith incorporates this in his brief as fully as if again set out. Petitioner desires merely to point out the following:

In the Selective Training and Service Act of 1940, section 8(i) declared that Nazis are subversive to our government when it said, "It is the expressed policy of the Congress that whenever a vacancy is caused in

the employment rolls of any business or industry by reason of induction into the service of the United States of an employee pursuant to the provisions of this Act such vacancy shall not be filled by any person who is a member of the Communist Party or the German-American Bund."

This section alone conclusively shows that special damage need not be alleged, if a Nazi Trojan Horse is the same as a person working for the interest of the Nazi Government. In essence, therefore, the only question to be considered here is that which concerns the accepted meaning of "Trojan Horse". Petitioner will not burden the court with repetition of the argument already adduced, but will add just this, that the court should not have dismissed the complaint as a matter of law but should have submitted it as a matter of fact to a jury, if it was reasonably capable of any defamatory meaning. (*Meyerson v. Hurlbut*, 68 App. D. C. 360, 98 Fed. 2nd 232.)

VI.

SUMMARY

Petitioner, therefore, respectfully submits that this is certainly a case which should be submitted to a jury; that Martin Dies should not be allowed to follow the example of the squid and cover himself with a protective coloring of technical ink at the same time that he disgorges his libelous poison; that your petitioner should not be subjected to an unwarranted attack on an Americanism extending back more than 300 years into Colonial times; and that Mr. Dies having accused your petitioner of being an agent of the Nazi government

(that meaning pervading the whole context of the book), he should either be compelled to respond in damages or prove his allegation. Mr. Dies should not be permitted to give a libelous definition to "Trojan Horse" in his book, and then to switch his own definition when sued for his libel.

WHEREFORE, it is respectfully submitted that a writ of appeal should be granted, that this court should review the decision of the United States Court of Appeals for the District of Columbia and finally reverse it.

Respectfully submitted,

J. S. POTTS, Trading as Southern
Progress Publishing Company,
Petitioner, Pro Se.

